

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**BRIAN LY,** )  
 )  
**Plaintiff,** )  
 )  
**v.** )      **Case No. CIV-14-128-R**  
 )  
**WILLIAM A. SHERROD, et al.,** )  
 )  
**Defendants.** )

**REPORT AND RECOMMENDATION**

Plaintiff, a prisoner appearing *pro se*, has filed this action under 42 U.S.C. § 1983 alleging various violations of his constitutional rights. United States District Judge David L. Russell has referred the matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). In accordance with that referral, the undersigned granted Plaintiff's application to proceed *in forma pauperis*. On May 13, 2014, the undersigned entered an order (ECF No. 14) advising Plaintiff that service must be effected on each Defendant within 120 days after the complaint is filed. On February 9, 2015, the Court issued a Show Cause Order (ECF No. 15) advising Plaintiff that his failure to submit the required service paperwork and timely serve the Defendants could result in the dismissal of this action. Plaintiff was given until February 24, 2015, to file proof of service or show good cause why service has not been made. Plaintiff was further advised that absent a showing of service or good cause, the undersigned would recommend that the Complaint be dismissed against the Defendants without prejudice.

A review of the court file indicates the Plaintiff has neither filed proof of service nor responded to the Court's Order (ECF No. 15) in any way.

As of the date of this order, the deadline for complying with the Court's Order passed over nine weeks ago. Further review of the Court's docket shows that Plaintiff filed his complaint on February 10, 2014, therefore the 120 day time limit for service has long since expired. Fed. R. Civ. P. 4(m).

The undersigned finds that Plaintiff's failure to comply with the Court's Orders, in light of the Court's right and responsibility to manage its cases, warrants dismissal of this action without prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 n.2, 1162 (10<sup>th</sup> Cir. 2007) (*sua sponte* dismissal for failure to comply with Court's orders permitted under federal rules, and court need not follow any particular procedures in dismissing actions without prejudice for failure to comply).

### **RECOMMENDATION**

Based on the foregoing findings, it is recommended that this action be **DISMISSED WITHOUT PREJUDICE** for Plaintiff's failure to comply with this Court's orders, specifically failing to submit the necessary paperwork required for service. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **May 26, 2015**, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Plaintiff is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and

legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10<sup>th</sup> Cir. 2010).

This Report and Recommendation **disposes of all issues** referred to the undersigned Magistrate Judge in the captioned matter.

**ENTERED** on May 6, 2015.



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SHON T. ERWIN  
UNITED STATES MAGISTRATE JUDGE